

November 14, 2005

Ann E. Wessel  
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Department of Ecology  
P.O. Box 47600  
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RE: Preliminary Phase I Municipal Stormwater NPDES and State Waste Discharge  
General Permit

Dear Ms Wessel:

The purpose of this letter is to provide joint comments from the Port of Seattle, the Port of Tacoma and the Washington Public Ports Association on the Preliminary Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit (the "Preliminary Permit"). We appreciate the opportunity to submit these comments, and apologize for the lateness of their submission. We are attaching a Revised Permit with specific language changes.

One unintentional advantage of our late submittal is that we have had the opportunity to review the comments of other Permittees. We have examined carefully the comments submitted by the City of Seattle and are in agreement with many of them. As discussed in more detail below, for some sections of this permit we have simply adopted by reference the City of Seattle's suggested changes.

The following is a section-by-section discussion of our comments.

### **Special Condition S1: Permit Coverage and Permittees**

We agree with the Preliminary Permit's approach of having Port districts be subject to requirements separate from Permittees, Co-Permittees and other Secondary Permittees. Obviously, the Ports are in a vastly different situation from the City and County Permittees and Co-Permittees, because those entities have been working under a Municipal Permit for over ten years, and possess the legal and financial resources to address stormwater in a more comprehensive manner than a Port district can. On the other hand, we recognize that Port districts do have broader statutory authority than other Secondary Permittees and therefore can legally act in ways that other Secondary Permittees cannot.

However, we do not see any reason to create a distinction between the Ports of Tacoma and Seattle and any other Port district in the state in terms of the management

requirements. All Port districts have the same degree of authority under State law. All Port districts face the same difficult issues related to implementation of a new program, including obtaining legal authority and developing the financing for such a program. Of course, the scale of the effort will depend on the size and level of industrialization of the Port district, but the essential management requirements should not differ. An exception to this general rule is the monitoring requirements, which do require an extra financial burden for the smaller Phase II Ports which is not appropriate at this time.

We therefore propose that both the Phase I and Phase II permits contain a special section that applies to Port districts, substantially as shown in Special Condition S8 (as revised). In addition, Phase I Ports would be required to perform the monitoring requirements of Special Condition S6.C (as revised).

### **Special Condition S2: Authorized Discharges**

We fully agree with the comments that have been made by the City of Seattle, as well as nearly every other Permittee, concerning the problems with the Preliminary Permit's distinction between new vs. old discharges, rather than new vs. old conveyances. We also agree with the City that it makes more sense to handle un-permitted discharges as "Illicit Discharges" and that the definition of Illicit Discharges should be the same as the language of the Clean Water Act and its regulations.

### **Special Condition S3: Responsibilities of Permittees, Co-Permittees and Secondary Permittees**

Our changes track the City of Seattle's comments.

### **Special Condition S4: TMDLs**

No comments.

### **Special Condition S5: Compliance with Standards**

The language of the Preliminary Permit is both extremely confusing and legally treacherous. The City of Seattle has proposed two alternatives, either of which would be acceptable to the Ports, although we have a slight preference for the City's Revision #1, as reflected in the attached Revised Permit.

In addition, we would suggest that it would make sense to address in Special Condition S5 how non-compliance by entities with another Ecology-issued permits would impact a determination of compliance for the Municipal Permittees. In the Preliminary Permit, this issue is buried in S7.C.7.a.(iii) ("Source Control") and completely absent from the equivalent section applicable to Port districts, Special Condition S8.D.2. The attached Revised Permit simply moves the language from S7.C.7.a.(iii) to S5. In the alternative, it should be added to S8.D.2.

## **Special Condition S6: Monitoring**

For a number of reasons, we strongly disagree with the approach taken in the Preliminary Permit by which the Ports of Seattle and Tacoma are expected to perform the same type and level of monitoring as the City and County Permittees. First, it is unfair. Ecology has never required any other permittee, under any other stormwater permit (municipal OR industrial) to perform such an expensive and difficult task in its first permit cycle. Simply put, the Ports are going to busy enough setting up the basic elements of a stormwater program without being expected to embark on a research program at the same time. Second, there is nothing unique about Port properties, such that our data is necessary in order to draw conclusions about stormwater impacts from industrial and commercial properties. Third, particularly for the Ports of Seattle and Tacoma, it makes absolutely no sense for us to be monitoring the large receiving waters that we discharge to (*i.e.* Duwamish River, Elliott Bay and Commencement Bay), given that the numerous discharges and sources to those water bodies will make it impossible to distinguish stormwater's contribution to the baseline conditions. Finally, BMP effectiveness monitoring is completely valueless to the Ports, who have no control over or input into the development of State, City and County stormwater ordinances and manuals that dictate which construction and post-construction BMPs must be used.

On the other hand, we understand Ecology's hunger for localized stormwater information, and are willing to help out in a limited way, if this can be done without compromising our other responsibilities. For example, if another entity wanted to evaluate a BMP located on Port property, we would certainly be willing to assist their research if doing so does not interfere with tenant operations.

Consistent with our comments related to Special Condition S1, we believe a more appropriate approach would be to create a stand-alone monitoring requirement for the Phase I Ports. (As mentioned above, the Phase II Ports do not have the financial resources to support any monitoring program and therefore should be treated the same as the other Phase II Secondary Permittees, *i.e.* no monitoring.) The Port-specific monitoring requirements would consist of a scaled-down version of stormwater monitoring, without any receiving water or BMP performance monitoring requirements. It makes sense for the Port to perform such stormwater outfall monitoring because doing so involves access to Port properties, and because it would assist the Port in satisfying the source control and illicit discharge requirements contained in Special Condition S8.

As for receiving water and BMP performance monitoring, it makes no difference to the Ports who performs it, although we believe it makes the most sense for a state-wide entity such as Ecology or separate Stormwater Institute to be in charge. This would concentrate the expertise in one body and maximize the cost-effectiveness of the research program. Moreover, it makes sense because Ecology is already performing state-wide water quality testing in receiving waters, and evaluating the effectiveness of BMPs for the Stormwater Manual. Another task that needs to be done, preferably by a centralized body with expertise, is to revise the QAPP guidelines. The current guidelines are open to so much

interpretation that much time is wasted trying to get Ecology approvals. We would support a modest permit fee increase to pay for such services.

The attached Revised Permit presents the Port's approach for the type of scaled-down stormwater monitoring that we believe is appropriate. The following requirements have been deleted:

- Stream channel sampling, because neither Port discharges to streams.
- Chloride, because all discharges are to marine waters
- TPH is substituted for BNA: TPH is a more appropriate measurement for the types of petroleum-derived contaminants typically found on Port properties.
- Pesticides: Pesticide sampling is extremely expensive to test for and infrequently detected, particularly in non-residential areas such as Port property. We fail to see the value of this testing, as compared to other monitoring needs.
- Toxics: There is no regulatory guidance available for toxicity testing of stormwater. Current test methods are not appropriate for stormwater, particularly where there is a freshwater discharge to marine environment (no way to re-create exposure conditions). We are suspicious of having a criteria such as "first flush" being defined by Ecology.
- Fecal coliform: E. coli and enterococci bacteria are pollutants typically found in residential areas, not the typical commercial and industrial land uses of Port properties.

Section S6.C.3(g) of this Revised Permit contains a provision whereby a Port can reduce or eliminate monitoring for any parameter, when that parameter has not been detected in stormwater for eight consecutive quarters. This would allow us to focus our limited monitoring dollars on the parameters of concern. We would suggest that such an approach may be valuable for Permittees and Co-Permittees.

#### **Special Condition S7: Stormwater Management Program**

No comment

#### **Special Condition S8: Stormwater Management Program for Co-Permittees and Secondary Permittees**

As might be expected, we have made extensive comments to this Special Condition which will be the primary driver for our stormwater management programs. An overarching concern is regarding the schedules for deliverables, reports and other responsibilities. The Preliminary Permit grossly underestimates the amount of time it will take to achieve these requirements, taking into account the following needs:

- Need to substantially complete all drainage mapping before stormwater program can be designed
- Need to coordinate workload and staffing with the City
- Need to negotiate interlocal agreement with the City
- Need to obtain funding authorization from Commission
- Need to find and hire qualified staff

- Need to revise tariffs and leases
- Need to get monitoring plan approved by Ecology
- Need to coordinate development of SWPPPs with tenants

Therefore, the Revised Permit moves all deadlines to a more logical order, consistent with the attached Gantt chart.

Most of the other comments are self-explanatory, however a couple of explanations are in order. The changes to the mapping section (S8.A.D.1) were done to harmonize the requirements between the City and the Port, so that we are all mapping the same size and type of conveyances. Also, requirements related to flow control have been deleted because both Ports discharge to marine areas; if Ecology decides to adopt our recommendation of creating a uniform S8 for both Phase I and Phase II ports, then the flow requirements should be re-instated to account for other ports.

**General Conditions, Definitions** – agree with City of Seattle comments

Thank you for this opportunity to comment on the Preliminary Permit. If you have any questions concerning the contents of this letter, please contact Susan Ridgley for the Port of Seattle ((206) 728-3416) and Cindy Lin for the Port of Tacoma ((253) 428-8672).

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Cc: Revised Permit  
Gantt chart